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Honorable Mike Driscoll
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Opinion No. JM-387

Re: Constitutionality of House Bill
No. 2370, Acts 1985, 69th Leg., ch.
568, at 4427, which applies to
counties and areas of counties out-
side the boundaries of cities of 1.5
million or more residents

Dear Mr. Driscoll:

You have inquired whether chapter 568 of the Sixty-ninth Legisla-
ture, Acts 1985, 69th Leg., ch. 568, at 4427, which enacted article
974a-3, V.T.C.S., violates article III, section 35 of the Texas
Constitution. That section provides as follows:

No bill, (except general appropriation bills,
which may embrace the various subjects and
accounts, for and on account of which moneys are
appropriated) shall contain more than one subject,
which shall be expressed in its title. But if any
subject shall be embraced in an act, which shall
not be expressed in the title, such act shall be
void only as to so much thereof, as shall not be
so expressed.

Tex. Const. art. III, §35. The Interpretive Commentary following the
above quoted provision states, in part, as follows:

The purpose of the title-subject provision is
threefold: First, it is designed to prevent
log-rolling legislation, i.e., to prevent the
writing of several subjects having no connection
with each other in one bill for the purpose of
combining various interests in support of the
whole. Second, it prevents surprise or fraud upon
legislators by means of provisions in bills of
which the titles give no intimation, and which
might therefore be overlooked and carelessly and
unintentionally adopted. Third, it permits the
people to be fairly apprised of the subjects of
legislation under consideration, so that they may

have an opportunity of being heard, if they so desire.

Tex. Const. art. III, §35, interp. commentary (Vernon 1984).

While it is well-settled that "the quoted provision . . . is mandatory," Sutherland v. Board of Trustees of Bishop Independent School District, 261 S.W. 489, 490 (Tex. Civ. App. - San Antonio 1924, writ ref'd),

[i]t is also well settled that the caption of an act should be liberally construed so as to uphold its validity if at all possible. Gulf Ins. Co. v. James (supra); Lee v. State, 163 Tex. 89, 352 S.W.2d 724 (1962). It has also been held that, 'none of the provisions of a statute should be regarded as unconstitutional where they relate, directly or indirectly, to the same subject, have mutual connection, and are not foreign to the subject expressed in the title.' Stone v. Brown, 54 Tex. 330.

C. Hayman Construction Company v. American Indemnity Company, 471 S.W.2d 564, 566 (Tex. 1971).

The title of the questioned enactment reads as follows:

relating to the submission and approval of certain development plats in cities of 1,500,000 residents or more; providing a penalty.

V.T.C.S. art. 974a-3, Acts 1985, 69th Leg., ch. 568, at 4427 (title to H.B. No. 2370). You challenge this title's adequacy because it "does not refer to cities' extraterritorial jurisdiction. . . ." The text of the statute does refer to cities' extraterritorial jurisdiction.

On the basis of the authorities cited above, we conclude that the subject of chapter 568 is adequately expressed within its title. The title does not, as you seem to suggest, restrict its applicability to the limits of a city's normal governance, but rather merely describes the subject as being the filing of plats in certain cities. Hence, the title's sufficiency is not defeated by the maxim that mention of one thing excludes another which caused the invalidation of the act at issue in Sutherland, supra. Since extraterritorial jurisdiction is inextricably related to platting of subdivisions in cities, see, e.g., V.T.C.S. arts. 970a, 974a, the title of chapter 568 is covered by the following standard as stated in the Hayman case:

Our courts have upheld the validity of statutes which state in general terms a subject within the body of the act which is germane to the general

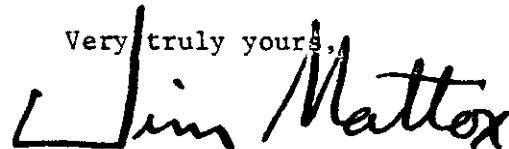
subject stated in the title of the act. Doeppen-
schmidt v. I. & G. N. R. Co., 100 Tex. 532, 101
S.W. 1080 (1907); Consolidated Underwriters v.
Kirby Lumber Co., Tex. Com. App., 267 S.W. 703
(opinion adopted 1943); Central Education Agency
v. Ind. School Dist. of El Paso, 152 Tex. 56, 254
S.W.2d 357 (1953).

C. Hayman Construction Company v. American Indemnity Company, 471
S.W.2d 564, 566 (Tex. 1971).

S U M M A R Y

The title of chapter 568, Acts 1985, 69th Leg.,
ch. 568, is not violative of section 35 of article
III of the Texas Constitution.

Very truly yours,



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